

Kevan S. Corson & Patrice S. Corson

v.

City of Manchester

Docket No.: 21262-04EX

DECISION

The “Taxpayers” appeal, pursuant to RSA 72:34-a, the “City’s” 2004 denial of the Taxpayers’ request for an elderly exemption as provided under RSA 72:39-a on a single family home on an 8,790 square-foot lot (the “Property”). For the reasons stated below, the appeal is denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, they were entitled to the exemption for the year under appeal. See TAX 204.06.

The Taxpayers argued they were entitled to the elderly exemption because:

- (1) the prior owner of the Property received the elderly exemption;
- (2) the first tax bill for tax year 2004 reflected the elderly exemption; and
- (3) the elderly exemption should not be removed until tax year 2005.

The City argued the denial of the elderly exemption was proper because:

- (1) the Taxpayers were not the “applicant” for the exemption; and

(2) the person previously receiving the voluntary exemption requested the exemption be removed.

Board's Findings and Rulings

During the hearing, the City made a motion to dismiss the appeal (the "Motion") based on the assertion the Taxpayers did not have standing to appeal the City's denial of their elderly exemption request. The board took the Motion under submission and allowed the parties an opportunity to argue their respective positions regarding the appeal in general and the Motion in particular.

A brief chronology of events may be helpful in following the course of this case.

- June 27, 1997- Mrs. Ruth Sullivan transfers a one-half interest in the Property to Mrs. Patrice Corson, her daughter.
- July 3, 1997- Mrs. Sullivan applies for and receives an elderly exemption from the City.
- 1997-2003- Mrs. Sullivan receives the full exemption although she only owned a one-half interest in the Property.
- April 29, 2004- Mrs. Sullivan and Patrice Corson transfer their interests in the Property to Kevan S. and Patrice S. Corson, the appellants in this case.
- June 4, 2004 – Mrs. Sullivan appears in person and requests the City remove the elderly exemption.

Based on the evidence, the board finds the Taxpayers do not have standing to appeal the City's removal of the elderly exemption from the Property and grants the Motion. As the City testified, the RSA 72:39-a elderly exemption is a voluntary exemption. In 1997, Mrs. Sullivan voluntarily applied for, albeit without disclosing accurately the full extent of her ownership in

the Property, and received a full elderly exemption. She continued to receive the benefit of a full exemption until she requested the City remove her exemption in June 2004.

The Taxpayers argued because they purchased the Property with all its rights on April 29, 2004 and Mrs. Sullivan no longer had any rights to the Property she should not have been allowed to make the request to the City. The board finds this argument to be unpersuasive.

As the City noted at the hearing, RSA 72:39-a, I states a “person” must meet certain criteria to apply for and receive an elderly exemption. This fact, coupled with the wording in RSA 72:34-a that an “applicant” may appeal the denial of an exemption indicates the exemption is a personal one, rather than an exemption attached to a specific property. For example, had Mrs. Sullivan, after transferring her interest in the Property she owned with her daughter, purchased another property in the City, she could have transferred the elderly exemption to the new property providing she still met the criteria in RSA 72:39-a.

Thus, the board finds only the “applicant” (Mrs. Sullivan) would have standing to appeal her elderly exemption pursuant to RSA 72:34-a; Kevan and Patrice Corson have no such standing as they are not the “persons” eligible for the exemption.

For these reasons the board grants the City’s motion to dismiss the appeal.

A motion for rehearing, reconsideration or clarification (collectively “rehearing motion”) of this decision must be filed within thirty (30) days of the clerk’s date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board’s decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances

as stated in board rule TAX 201.37(f). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Kevan & Patrice Corson, 153 Exchange Avenue, Manchester, NH 03104, Taxpayers; and City of Manchester, Chairman, Board of Assessors, One City Hall Plaza-West Wing Manchester, NH 03101.

Date: August 10, 2006

Anne M. Stelmach, Clerk